

Part C State Performance Plan (SPP) for 2005-2010**Overview of the State Performance Plan Development:**

See page 1 of the State Performance Plan.

Monitoring Priority: Effective General Supervision Part C / General Supervision**Indicator 11: Percent of fully adjudicated due process hearing requests that were fully adjudicated within the applicable timeline.**

(20 U.S.C. 1416(a)(3)(B) and 1442)

Measurement:

Percent = $(3.2(a) + 3.2(b))$ divided by (3.2) times 100.

Overview of Issue/Description of System or Process:

South Dakota data reflects that the general supervision procedures for due process hearings identify and correct noncompliance in a timely manner. The limited number of hearings also indicates the state uses the system effectively to ensure the provision of appropriate services to students in need of special education. Birth to 3 Connections program, Part C follows Part B procedures for effective general supervision.

The Part C, Birth to 3 Connections program uses the following procedures to respond to administrating due process hearing requests that were fully adjudicated within the applicable timeline. These procedures will be revised in accordance with Part B and C final regulations.

Due Process Complaint Notice

The Birth to 3 Connections program must have procedures that require party, parent or Birth to 3 Connections program, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).

The party filing a due process complaint must forward a copy of the due process complaint to the State Birth to 3 Connections program.

The due process complaint notice must include:

1. The name of the child;
2. The address of the residence of the child;
3. The name of the Birth to 3 Connections program the child is serving;
4. In the case of a homeless child (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the Birth to 3 Connections program the child is serving;
5. A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
6. A proposed resolution of the problem to the extent known and available to the party at the time.

The State Birth to 3 Connections program has developed a model form to assist parents in filing a compliant and due process complaint notice.

A party, parent or Birth to 3 Connections program, may not have a hearing on a due process complaint or engage in a resolution session until the party, or the attorney representing the party, files a due process complaint that meets the requirements of this section.

The due process complaint required by this section must be deemed sufficient unless the party, parent or Birth to 3 Connections program, receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements of this section.

Within five days of receipt of the above notification, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of this section, and must immediately notify the parties in writing of that determination.

A party may amend its due process complaint only if:

1. The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a resolution session; or
2. The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

The applicable timeline for a due process hearing shall recommence at the time the party files an amended notice, including the timeline for a resolution session.

If the Birth to 3 Connections program has not sent a prior written notice under Part C of IDEA to the parent regarding the subject matter contained in the parent's due process complaint, the Birth to 3 Connections program must, within 10 days of receiving the due process complaint, send to the parent a response that includes:

1. An explanation of why the Birth to 3 Connections program proposed or refused to take the action raised in the due process complaint;
2. A description of other options that the IFSP Team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the Birth to 3 Connections program used as the basis for the proposed or refused action; and
4. A description of the other factors that are relevant to the Birth to 3 Connections program's proposed or refused action.

A response by a Birth to 3 Connections program under this section shall not be construed to preclude the Birth to 3 Connections program from asserting that the parent's due process complaint was insufficient, where appropriate.

Except as provided above, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

Impartial Due Process Hearings

The parent or the Birth to 3 Connections program may initiate a hearing on any matters relating to the identification, evaluation or placement provision of appropriate of early intervention services to the child.

The party, parent or Birth to 3 Connections, requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint unless the other party agrees otherwise.

When a hearing is initiated, the Birth to 3 Connections Program shall inform you of the availability of mediation. If you are requesting a hearing or request information on any free or low-cost legal services, the Birth to 3 Connections program shall inform you of it and any other relevant services available in the area.

A parent or Birth to 3 Connections program must request an impartial hearing on their due process complaint within two years of the date the parent or Birth to 3 Connections program knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under IDEA, in the time allowed by State law.

The timeline described above does not apply to a parent if the parent was prevented from filing a due process complaint due to:

1. Specific misrepresentations by the Birth to 3 Connections program that it had resolved the problem forming the basis of the due process complaint; or
2. The Birth to 3 Connections program's withholding of information from the parent that was required under Part C of IDEA to be provided to the parent.

At a minimum, a hearing officer:

1. Must not be:
 - a. An employee of the State Department of Education or the Birth to 3 Connections program that is involved in the provision of early intervention services or care of the child; or
 - b. A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;
2. Must possess knowledge of, and the ability to understand, the provisions of IDEA, Federal and State regulations pertaining to IDEA, and legal interpretations of IDEA by Federal and State courts;
3. Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
4. Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

A person who otherwise qualifies to conduct a hearing under this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer. The State Birth to 3 Connections program shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

Any party to a hearing has the right to:

1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
2. Present evidence and confront cross-examine, and compel the attendance of witnesses;
3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 business days before the hearing;
4. Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and
5. Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

At least 5 business days prior to a hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

A hearing officer may bar any party that fails to comply with the disclosure requirements of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

As a parent involved in the hearings, they have the right to:

1. Have the child who is the subject of the hearing present; and
2. Have the hearing open to the public.

Subject to this section, a hearing officer must make a decision on substantive grounds based on a determination of whether the child received appropriate early intervention services.

In matters alleging a procedural violation, a hearing officer may find that a child did not receive appropriate early intervention services only if the procedural inadequacies:

1. Impeded the child's right to appropriate early intervention services;
2. Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of appropriate early intervention services to the parents' child; or
3. Caused a deprivation of developmentally educational benefit.

Nothing in this section shall be construed to preclude a hearing officer from ordering a program to comply with procedural requirements in this document.

Nothing in this section shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

The record of the hearing and the findings of fact and decisions must be provided at no cost.

The State Birth to 3 Connections program, after deleting any personally identifiable information, shall transmit the findings and decisions to the State Interagency Coordinating Council, and make those findings and decisions available to the public.

A decision made in a hearing is final, except that any party involved in the hearing may appeal the decision through civil action.

The State Birth to 3 Connections program shall ensure that not later than 45 days after the expiration of the 30 day period regarding a resolution session:

1. A final decision is reached in the hearing; and
2. A copy of the decision is mailed to each of the parties.

Baseline Data for FFY 2004 (2004-2005):

There have not been any requests for due process hearings filed in the Birth to 3 Connections program.

Discussion of Baseline Data:

South Dakota has a history of limited due process hearings in Part B and none in Part C. This is due to a strong commitment to resolution of issues and parent concerns before formal dispute resolution is necessary. The Part C state staff and service coordinators collaborate closely to make sure families understand their parent rights and to resolve issues that arise in a timely manner and families may at any time request formal dispute resolution.

FFY	Measurable and Rigorous Target
2005 (2005-2006)	100 percent of fully adjudicated due process hearing requests were fully adjudicated within the applicable timeline.
2006 (2006-2007)	100 percent of fully adjudicated due process hearing requests were fully adjudicated within the applicable timeline.
2007 (2007-2008)	100 percent of fully adjudicated due process hearing requests were fully adjudicated within the applicable timeline.
2008 (2008-2009)	100 percent of fully adjudicated due process hearing requests were fully adjudicated within the applicable timeline.
2009 (2009-2010)	100 percent of fully adjudicated due process hearing requests were fully adjudicated within the applicable timeline.
2010 (2010-2011)	100 percent of fully adjudicated due process hearing requests were fully adjudicated within the applicable timeline.

Improvement Activities/Timelines/Resources:

Activities	Resources	Timelines
The state will monitor its hearing process and timelines to ensure maintenance of 100% adjudication.	<ul style="list-style-type: none"> State staff Legal counsel for the department Office of Hearing Examiners 	<ul style="list-style-type: none"> July 1, 2005 – June 30, 2011
Update Administrative Rules for South Dakota concerning due process hearings and resolution sessions when final federal regulations are complete.	<ul style="list-style-type: none"> State staff Legal Consultant Advisory Panel Legislative Research Council 	<ul style="list-style-type: none"> Fall 2006
Provide training for legal assistant for the department concerning the update regulations.	<ul style="list-style-type: none"> State staff Legal Consultant for DOE MPRRC 	<ul style="list-style-type: none"> Fall 2006
Joint training for State staff and	<ul style="list-style-type: none"> State staff 	<ul style="list-style-type: none"> Winter 2006

SPP Template – Part C (3)**SOUTH DAKOTA**

State

parents on procedural safeguards	<ul style="list-style-type: none">• Legal Counsel for DOE• MPRRC• South Dakota Parent Connection	
Conduct update for Part C for hearing officers	<ul style="list-style-type: none">• MPRRC staff• State Staff	<ul style="list-style-type: none">• Fall 2006 – June 30, 2011
Service Coordinator's Training to assist with the parent rights	<ul style="list-style-type: none">• MPRRC staff• State staff	<ul style="list-style-type: none">• Fall 2006 – June 30, 2011
Update parent's rights video	<ul style="list-style-type: none">• MPRRC staff• State staff	<ul style="list-style-type: none">• Fall 2006